Teleperformance USA

April 23, 2003

Commission's Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington D.C. 20554

Ref: CG Docket No. 02-278
Rules and regulations implementing the Telephone Consumer Protection Act of 1991

As one of the top 10 teleservices agency in the U.S., TeleperformanceUSA would like to submit our comments regarding the FCC's Further Notice of Proposed Rulemaking relative to the TCPA.

We continue to oppose the revisions of the Telemarketing Sales Rule recently made by the FTC. As currently formulated, the FTC rules are about to have a devastating impact on our industry, the jobs that it produces and our economy as a whole—with little perceived benefit to consumers, given that the measures will not eliminate the concerns raised.

In support of the FCC's mission, we would like to suggest 5 modifications to the specific FTC rules that we believe will at least help mitigate the negative impact to business while maintaining the introduction of measures to reduce the annoyance factor to consumers. Each measure adopted will save business, jobs, revenues, taxes and stock values.

Your consideration is appreciated.

Respectfully,

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Key Facts:

- 180,000,000 consumers purchase via telemarketing in 2002
- $620 Billion in sales
- 4 million people employed by outbound telemarketing
- Most consumer “complaints” received have not related to DNC issues and fall under exemptions—these data should be carefully analyzed to identify root causes
- An economic impact study is needed to translate regulations to effectiveness and job impact
- *The current recession is caused by lack of sales.* Our President’s message is to stimulate spending in the business and consumer sector. Several key service sector industries rely on outbound telemarketing as a cost-effective sales channel to offer a *significant portion* of their offerings
- *Telemarketing is a job creation and job protection tool. It is, by far, the most effective sales tool*
- The telemarketing industry projects that the rules on the Nat’l DNC list and the Abandon % will reduce the marketplace and economic viability of certain products by as much as 60%--as a major player in this market, we can confirm that this is the basis that we, our colleagues and clients are working by at this time
- Reduction of activity translates directly to labor reductions, thus 1.2 to 2.4 million jobs lost within a short timeframe
- Our organization, one of the top 10 telemarketing agencies in the U.S., has adjusted business planning for 2003 and beyond on the basis of reductions in activity between 30-60%. We are currently contracting our resources due to direct and anticipated impact of the FTC rules. Once the FTC rules are fully applicable, as many as 6,000 employees could have their jobs impacted. To date, 4 call centers (850 jobs) have been closed; 3 centers have reduced activity (650 jobs) as a result of the direct or anticipated impact. The recent stays by the FTC have served to save jobs in the short run
- The FTC rules *alone* have reversed our company’s historical growth trends of constant growth and expansion over the past 10 years (our Annual Report is available upon request)
- Investments required to upgrade all of our systems to meet the new FTC rules ($2.4 million and increased monthly labor costs of $200,000) will not be made, given the unlikeliness of recouping the investment—thus, again, our plans are to contract this activity
- The FTC rules are poorly crafted and will not significantly reduce the annoyance factor which is the basis for the rules. In some cases it will increase the annoyance factor
- Jobs, however, will be reduced which will fuel lower corporate revenues, lower stock values, lower corporate and personal taxes, higher unemployment costs and significantly fewer job opportunities for entry level, single parent, elder employees dependent upon their jobs for income and insurance coverage
- We would like to offer 5 suggestions below that will, in our opinion, help mitigate the negative economic impact while introducing new levels of regulation to protect consumers – see below.

Teleperformance USA's Proposed Modifications to the Current FTC Rule

1.) Current Do Not Call Process

Proposed Modification: Keep the current national list managed by the Direct Marketing Association (DMA) with legislation developed to overcome the gaps that have aggravated consumers' concerns.

Gaps:

1.) it is not obligatory for all companies to use the DMA list→*close the gaps*

2.) many types of telemarketing or users are exempt, consumers do not always understand this and become irate although the telemarketing company has adhered to every regulatory guideline→*improve consumer awareness on how to overcome this by use of company-specific lists*

3.) deployment of the Nat'l DNC list will cause confusion and even higher levels of frustration among consumers who expect that it will end all telemarketing calls, when in fact, it will not due to many exemptions and jurisdiction gaps→*create consistent rules across all industries, improve consumer awareness and remove the abandon message requirement which will become more irritating to consumers than delayed or dead air calls*

Basis: Every legitimate company in the teleservices industry rigorously applies the DMA DNC list, state DNC lists and individual company DNC lists. For agencies, a fourth, in-house list is also produced and used in on-going scrub processes. Although there are many lists, the processes are well in place to apply them—this is not a burden to industry.

Consumer Benefit: Further, it gives consumers flexibility in selecting who they wish to have contact them on a company-by-company basis and 3 options to ensure that all non-exempt companies contact them (ie., the State, DMA list and telemarketing agency DNC lists).

Economic Benefit: Savings of $18 million to implement effectively the same list. Resources and costs associated with attempting to coordinate state run and a national list are saved.

2.) National Do Not Call List

Proposed Modification: If a National DNC list goes into effect, reduce renewal period for consumers from 5 years to 1 year.

Basis: Consumers will forget they ever signed up. Annual renewals give them an opportunity to reconsider and reassert their desires. Accuracy of managing disconnected and changed phone numbers is greatly improved, avoiding incorrect suppressions of the marketplace.

Economic Benefit: The marketplace will remain open and viable for companies and their products that depend on this sales channel. Significant unemployment will be avoided.

Economic Impact of Current Rule: Under the 5 year renewal scenario, the marketplace is anticipated to contract as much as 60% in very short order. This contraction then becomes fixed for 5 years—company product and growth planning for many product lines will stop and/or be significantly curtailed. Significant unemployment will naturally follow.

3.) Abandon % Level

Proposed Modification: Limit the percentage of abandon calls within the safe harbor to 5% from 3%

Negative Economic Impact of the Current Limit: A 3% Maximum Abandon Rate is an unreasonable target for any predictive dialing technology. Based on operational assessments performed by ourselves and select vendors of this technology, the efficiency and productivity of telemarketing organizations will plummet an estimated minimum of 30%. This in turn would require these firms to raise prices by 30% or more to be in a position to maintain the viability of their current business operations.

Economic Benefit of Proposed Modification: Efficiencies of the predictive dialers in place today can continue to be leveraged without requiring major re-tooling and replacement investments or prompting choices to discontinue this activity.

Consumer Benefit of the Proposed Modification: A greater number of competitive product offerings will survive. Consumers will see reduced abandons as the industry aligns to a first-time restriction of 5% and not endure the ramifications of industry job losses to the economy.

4.) Restriction on Predictive Dialers (Abandon %)

Proposed Modification: expand the basis for calculating the percentage from "per day" to "per month".

Basis: What is important to understand on this topic is that the nature of calling generates natural and on-going variances in the abandon % caused by the variances in telemarketing lists and the dynamics involved in reaching consumers. As such, to leverage the productivity of the predictive dialing equipment, the abandon % always varies minute-by-minute and hour-by-hour throughout the course of calling in a day.

Issue: An abandon % measured by day is too problematic for at least two specific scenarios:

i. Lists that are called for a very short period of time in a day that might need to be discontinued (for example, when a list is performing poorly) and the choice to stop calling becomes dictated more on ensuring the abandonment target rate is met, rather than business considerations.

ii. System downtime which occurs from time-to-time, could result in preventing further calling on campaigns where the % happens to have been over 3% when interrupted.

Consumer Benefit: Reduced abandon calls, while avoiding negative impact to the economy due to job losses.

Economic Benefit: Productivity achieved by predictive dialers will not be unreasonably restricted thus allowing more product offerings to survive the tighter return on investment models.

5.) Abandon Definition

Proposed Modification: Require connection to a live agent or initiation of a recorded message within 2 seconds yet allow live agents to interrupt the message played to consumers as a part of the safe harbor provision.

Consumer Benefit: The ‘dead air’ annoyance is effectively eliminated and is not simply replaced by an annoying recorded message which we believe will aggravate consumers more.

Economic Benefit: This would provide significant flexibility in managing the dialer and greater ease at meeting the % target. Productivity will be saved which translates to saving the return on investment models of many product offers. Revenues, corporate taxes, stock values and jobs are preserved. Unemployment costs, lost corporate and personal taxes are avoided.

On behalf of the senior management team, thank you for considering our suggested modifications.

Respectfully,

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